

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 26**

**QUEBECOR/WORLD-MEMPHIS, INC. /1**

Employer

and

**Case 26-RC-8227**

**GRAPHIC COMMUNICATIONS UNION  
LOCAL 223-M**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: /2

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. /3
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:/4

**INCLUDED:** All electrical and equipment technicians, including group leaders, in the Electrical Shop of the Maintenance Department of the Memphis, Tennessee facility.

**EXCLUDED:** All other employees, including office clerical employees, professionals, managers, guards, and supervisors, as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Graphic Communications Union, Local 223-M.

## LIST OF VOTERS

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Memphis Regional Office (Region 26), 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **December 27, 2000**.

## RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **January 3, 2001**.

**DATED** December 20, 2000, at Memphis, Tennessee.

/S/

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Ronald K. Hooks, Regional Director  
Region 26, National Labor Relations Board  
1407 Union Avenue, Suite 800  
Memphis, TN 38104-3627  
tel: 901-544-0018

1. The name of the Employer was amended at the pre-election hearing.
2. The Employer and Petitioner have each filed briefs which have been duly considered.
3. The parties stipulated that Quebecor World-Memphis, Inc., is a Delaware corporation with a place of business located in Memphis, Tennessee. During the past twelve (12) months, a representative period, the Employer from its Memphis, Tennessee, location sold and shipped products valued in excess of \$50,000 directly to points located outside the State of Tennessee.
4. The parties are in agreement in regards to the scope and the general description of the unit found appropriate herein. The parties stipulated that the classifications included within the unit described herein share a community of interest and are appropriately included in a unit for the purposes of collective bargaining. The parties have stipulated that the electricians including the Shift Group Leaders, should be included within the unit.<sup>1</sup> The sole issue in this matter is the status of one (1) employee, the Senior Group Leader for the Electrical Shop, Bobby Donovan, which will be discussed below.

The Petitioner seeks to represent the production and maintenance employees within the Employers' Electrical Shop including the Senior Group Leader. The Employer contends that the Senior Group Leader is a supervisor within the meaning of Section 2(11) of the Act and, as such, should be excluded from the unit.

The Employer produces advertising materials, which are inserted into newspapers. There are approximately three hundred and twenty-two employees who work in the Employer's

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<sup>1</sup> Although the Employer contends in its brief that even though the Shift Group Leaders were stipulated to be part of the bargaining unit, there was no stipulation as to their supervisory status. Given our

Memphis facility. The Employer currently has collective bargaining agreements with other unions who represent the following employees: photoengravers, press operators, paper handlers, and machinists.

The Employer's maintenance department consists of four (4) shops. These shops are the Machine Shop, the Facilities Maintenance Group, the Stock Room and the Electrical Shop, which is the only shop at issue in this petition. The maintenance department is supervised by Cecil Crook, the Director of Engineering and Maintenance.

The Electrical Shop is operated twenty-four (24) hours a day, seven (7) days a week and consists of three (3) shifts. There are a total of nine (9) employees in the Electrical Shop. The first shift is 7:00 a.m. until 3:30 p.m., the second shift is 3:00 p.m. until 11:30 p.m. and the third shift is 11:00 p.m. until 7:30 a.m. The first shift consists of the Senior Group Leader, Bobby Donovan, a shift Group Leader, Dennis Blankenship and three (3) electricians. The second shift consists of a Shift Group Leader, Allen Powers and one (1) electrician. The third shift consists of a Shift Group Leader, Allen French, and one (1) electrician.

Bobby Donovan is the Senior Group Leader for the Electrical Shop and works on the first shift. Donovan has worked at the Employer's facility as an electrician since 1983 until the present. From 1983 until 1989, Donovan worked for a subcontractor who serviced the Employer's predecessor. In 1989, Donovan was hired by the Employer to work in the Electrical Shop. He became Senior Group Leader in 1998 and is the most senior electrician. Donovan spends a majority of his time performing electrical work and maintaining the facility's equipment. He also meets with Shift Group Leaders from the second and third shifts to discuss

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conclusion regarding the supervisory status of the Senior Group Leader we also find there is insufficient evidence in the record to support a finding that the Shift Group Leaders exercise supervisory authority.

problems that may have come up during their respective shifts. Donovan takes this information and reports it to Cecil Crook in a daily meeting. According to Donovan's testimony when production problems arise he assigns electricians to work on the needed area and he can request employees to come in early or request they stay over if necessary but if an employee is scheduled to leave Donovan can not require that employee to stay. The record reflects that the authority to hold over and call in employees is also exercised by the Shift Group Leaders, and therefore is not exclusive to Donovan. Donovan also posts sheets on which electricians may sign up for voluntary overtime and he signs daily time sheets verifying that the employee did work. When Shift Group Leaders from other shifts have problems they can not handle, Donovan is the person consulted on how to handle the situation. For example, third shift Group Leader French testified that if a press is down for more than one (1) hour, the procedure is to contact Donovan for advise on how to deal with the situation. Then with the use of Donovan's experience and expertise, French and Donovan decide on a remedy to the problem. Donovan performs quality control analysis of work performed to ensure standards are met. On first shift, Donovan is given the discretion to prioritize work and to make assignments. The Shift Group Leaders also possess the authority to assign work and direct employees. Donovan has also attended training sessions with other supervisors and is paid \$2,860 per year more than the other electricians for being Senior Group Leader. The record does not include how much more this is compared to the Shift Group Leaders.

Donovan does not hire or terminate employees, but has participated in team interviews. According to Crook's testimony the team, which conducts the interviews, is comprised of Donovan, Crook and a electrician from the Electrical Shop who volunteers to be on the team. The team members give recommendations on which employees should be hired. If hired the

employees serve a probationary period during which Donovan observes their performance. Thereafter Donovan gives his recommendation, along with those of other employees, regarding the employees' performance to Crook. Donovan does not create work schedules. Yearly work schedules are worked out by agreement among the employees and Donovan writes it up to be presented to Crook. Donovan can not assign mandatory overtime and lacks the authority to allow an employee to leave for the entire day. Senior Group Leader is a first shift position. If Donovan chose to change to another shift he would be required to relinquish that position.

Supervisory status under the Act depends on whether an individual possesses the authority to act in the interest of the employer in the matters and in the manner specified in Section 2(11) of the Act, which defines the term "supervisor" as:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

To meet this definition, a person needs to possess only one of the specific criteria listed, or the authority to effectively recommend, so long as the performance of that function is not routine but requires the use of independent judgement. See Ohio Power Co. v. NLRB, 176 F. 2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 338 U.S. 899 (1949). See also Queen Mary, 317 NLRB 1303 (1995).

The party seeking to exclude an individual from voting for a collective bargaining representative has the burden of establishing that the individual is ineligible to vote. Golden Fan

Inn, 281 NLRB 226, fn. 24 (1986). As stated in The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989) “in representation proceedings such as this, the burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists.” Tucson Gas & Electric Co., 241 NLRB 181 (1979), Dickinson-Iron Agency, 283 NLRB 1029, 1034 (1987).

The Employer points to the fact that Donovan may hold employees over or call them in early when there are problems with production. The record does not show that Donovan has the authority to require an employee to work past their shift or to come in early. Donovan can contact employees and request they come in early, but there is no indication the employees were required to come in. Also the record reflects that Donovan may ask that an employee stay over, but he can not force that employee to stay if that employee had a prior commitment to leave. In St. Francis Medical Center-West, 323 NLRB 1046 (1997), the production leader possessed the authority to grant overtime in emergency situations, but the Board found there was no evidence the production leader had the authority to require employees to work overtime or to require employees to come in early. Therefore, the Board found the petitioner did not meet its burden of showing the production leader was a supervisor. As noted above, the record reflects that the authority to hold over and call in employees is also exercised by the other shift group leaders, and therefore was not exclusive to Donovan.

The Employer argues that Donovan has the authority to discipline employees. The Employer introduced an exhibit which reflected that Donovan issued an employee a verbal reprimand however, this was done after Donovan requested and received permission from Crook to give the verbal reprimand. Moreover it appears from the record, this was an isolated incident and consequently does not establish that Donovan has the authority to discipline employees or that he exercises independent judgement to give reprimands. Also the authority to issue oral



reprimands does not establish supervisory status, especially when there is no showing that it effects the employee's status. See Dickinson-Iron Agency, 283 NLRB 1029, 1036 (1987).

Donovan participated in interview teams, which also consisted of Crook and another clearly non-supervisory employee from the electrical department who volunteered to be on the team. Donovan and the employee would then give Crook input into whether an employee should be hired. Donovan also submitted his recommendations along with those of other employees on whether an employee should be retained after the employee's probationary period. These recommendations are reported to Crook who then submits his decision to the Human Resources Department. The evidence reflects that in connection with his participation in the interview committee, Donovan does not have the authority to effectively recommend the hire of employees.

The record reflects that Donovan attended only one training session with supervisors. This isolated incident does not establish Donovan has supervisory authority. Further attending training sessions with other supervisors is not a primary indicia of supervisory status.

The record established that Donovan does sign daily time sheets verifying that employees worked. This is a routine clerical activity and does not reflect the use of any independent judgement on the part of Donovan. Also the Board has stated that "the recording of time is merely a routine clerical function, not necessarily indicative of supervisory status." Hydro Conduit Corp., 254 NLRB 433, fn. 11 (1981).

The Employer states that Donovan has daily meetings with Crook to report on what has occurred on all of the other shifts. This shows that Donovan served as a conduit of information to Crook, and does not involve the use of independent judgement.

In the Employer's brief it points to Donovan's "in charge" status. During Donovan's testimony, he was asked whether he considered himself as being "in charge" of the Electrical Shop, to which he answered yes. Also during third shift Group Leader French's testimony, it was stated that Donovan is viewed as being "in charge" of the shop. Considering oneself to be "in charge" or having others believe one is "in charge" is not a primary indicia of supervisory status. Although it could be considered a secondary indicia, the view of being "in charge" does not satisfy the Employer's burden of proving supervisory status. Dickinson-Iron Community Action Agency, 283 NLRB1029 (1987).

As noted before, during French's testimony, the Employer pointed out that when there is a problem with a press which lasts for more than one (1) hour, French contacts Donovan for his advice. I find this does not show the exercise of independent judgement by Donovan because such assistance is based on Donovan's seniority and experience.

The record reflects that Donovan has the authority to let an employee leave work early, but only when it is pre-planned and advance notice is given. Donovan lacks the authority to let an employee leave for the entire day.

Employees do speak with Donovan concerning issues or concerns they have and the Employer points to this as the authority to resolve grievances but the evidence does not reflect that Donovan exercises his independent judgement in these matters. The record reflects that when the problem is a work-related situation Donovan takes it to Crook. Donovan testified that he discusses employee problems that are personal in nature. However this does not reflect any supervisory authority. Rather it reflects his willingness to take on a counseling role.

Although Donovan writes down the yearly schedule for employees, the record reflects this is done in cooperation and with input from the employees. Preparing the yearly schedule

does not require the exercise of independent judgement and is a routine clerical task performed by Donovan.

In a memorandum dated August 18, 2000, Crook circulated a list of names individuals could contact if problems were to arise. Donovan's name is listed on the top for the Electric Shop. The list is nothing more than a contact list and does not indicate that Donovan took on a supervisory status. In Aladdin Hotel, 270 NLRB 838 (1984), the test to determine the status of employees who substitute for supervisors is whether the employee spends a regular and substantial portion of their time performing supervisory tasks or whether such substitution was merely sporadic and insignificant. Nothing in the record reflects that Donovan spent a regular and substantial portion of his time performing supervisory functions when Crook took off.

In their brief the Employer discusses Atlanta Newspapers, 306 NLRB 751 (1992) to support their contention that Donovan is a supervisor. In Atlanta Newspapers, the Board found that the "men in charge" were supervisors because they possessed the authority to assign work and gave direction to employees in carrying out their duties and such authority required the use of independent judgement. The Board also pointed to the men in charge's authority to keep time, report tardiness and misconduct by employees, the authority to independently repair mechanical problems and resolve "squabbles."

Atlanta Newspapers can be distinguished from the instant case because Donovan does not possess the authority to exercise the independent judgement found by the Board to exist in that case. Donovan's assignment of work is routine in nature and does not require the exercise of independent judgement. The assignment of work by Donovan is based on Donovan's routine direction of employees and his authority to repair mechanical problems that require the use of expertise. The authority to assign work and direct employees is also performed by Shift Group

Leaders on their respective shifts. The reporting of time is a routine clerical function. Donovan reports tardiness and misconduct to Crook, but Donovan lacks the authority to discipline employees for these instances. The “squabbles” referred to by the Board in Atlanta Newspapers concerned disagreements between employees over job assignments. In the instant case, disagreements over job assignments would be a job-related matter, which the record indicates Donovan would refer to Crook.

The Employer also cites to McClatchy Newspapers, 307 NLRB 773 (1992) in which the Board found press operators were supervisors due to their authority to assign work to employees in their crews and responsibly direct them and the Board discussed secondary indicia to support the finding of supervisory status. As noted before, Donovan’s ability to assign work is routine and does not require the use of independent judgement. In regards to the direction of work, the Board considered the fact the press operators must exercise their independent judgement in the operation of the presses, including whether to shut the press down which would have a significant effect on other plant employees. The record in the instant case does not establish Donovan possesses similar authority.

In McClatchy Newspapers, the Board pointed to a number of secondary indicia to support their finding of supervisory status while noting that secondary indicia alone does not establish that one is a supervisor under Section 2(11). In the instant case, the Employer did not show that Donovan had the primary indicia to meet its burden of establishing supervisory status so the reliance on secondary indicia in this case is inappropriate.

Accordingly, I find that Donovan is not a supervisor within the meaning of Section 2(11) and shall be included in the unit.

There are approximately nine (9) employees in the unit found appropriate herein.

## Classification Index

177-8520-0000

177-8560-0000